

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Kelley Analyst: Jeani Brent Bill Number: SB 1754
Related Bills: See Legislative History Telephone: 845-3410 Amended Date: 04/10/2000
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Employer and Employee Public Transit Passes Credits/San Diego County

SUMMARY OF BILL

Under the Personal Income Tax Law (PITL) and Bank and Corporation Tax Law (B&CTL), this bill would allow a credit equal to 40% of the cost paid or incurred by an employer for providing employee subsidized public transit passes for transportation in San Diego County.

Under the PITL, this bill also would allow a credit to an employee of either 40% or 20% of the cost paid or incurred for subsidized public transit passes, as defined under the employer credit described above, depending on the number of days the employee uses mass transit in San Diego County (80 days to qualify for the 40% credit or 40 days to qualify for the 20% credit).

This bill would also make changes under uncodified law. These changes do not affect the department and are not discussed in this analysis.

SUMMARY OF AMENDMENT

The April 10, 2000, amendments added "Coronado" to the B&CTL employer credit definition of "high density employment area."

The April 5, 2000, amendments added "Coronado" to the PITL employer credit definition of "high density employment area." The amendments also corrected a typographical error in the PITL provisions. Other minor changes were made that do not impact the department or its programs or operations.

The March 28, 2000, amendments added PITL and B&CTL provisions regarding the tax credit.

This is the department's first analysis of this bill.

EFFECTIVE DATE

As a tax levy, this bill would become effective immediately upon enactment and, except as noted in "technical considerations" below, would apply to taxable and income years beginning on or after January 1, 2001, and before January 1, 2006.

LEGISLATIVE HISTORY

SB 1427 (2000) would allow a credit equal to 40% of the cost paid or incurred by an employer for providing subsidized public transit passes to an employee.

Board Position:			Department Director	Date
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AB 171 (1997) would have provided a tax credit for an employer who subsidized its employees' public transit passes or subsidized monthly vanpool fare. AB 1702 (1998) would have provided a tax credit for employer provided subsidized public transit passes. Both bills failed passage in the Legislature.

PROGRAM HISTORY/BACKGROUND

Prior state law allowed employers a ridesharing tax credit with two components. Employers were allowed a tax credit equal to 10% to 40% of the cost of providing subsidized public transit passes to employees, depending upon whether the employer offered free or subsidized parking. The second component was a tax credit for the purchase or lease of specified shuttle or commuter vehicles as part of an employer-sponsored ridesharing incentive program. The credit was 20% for an employer with 200 or more employees and 30% for an employer with fewer than 200 employees.

Prior state law also provided a transit-related tax credit to employees equal to 40% of the subscription costs paid or incurred for participation in a non-employer-sponsored vanpool program.

The above credits were allowed for taxable or income years beginning on or after January 1, 1989, and before January 1, 1996.

SPECIFIC FINDINGS

Existing federal and state law allows taxpayers to deduct ordinary and necessary business expenses, which generally would include compensation of employees provided in the form of transit passes or other commuter benefits.

Existing federal law allows employees certain exclusions from gross income for the value of employer-provided commuter transportation, transit passes, or qualified parking. Employees generally cannot deduct their regular costs of commuting to and from their place of business under either federal or state law.

Existing state law allows an employee to exclude from gross income the amount of compensation or the fair market value of any benefit (except salary or wages) received from an employer for participation in any ridesharing program in California, including the value of a monthly transit pass for use by the employee or his or her dependents.

This bill would allow a credit equal to 40% of the cost paid or incurred by an employer (other than a governmental agency) for providing subsidized public transit passes to an employee. The bill would define "transit pass" as any pass, etc., that entitles a person to transportation on a public mass transit vehicle, but only if the vehicle is in a redevelopment area or high density employment area (as those two terms are defined) located in San Diego County. The credit would be in lieu of any deduction to which the taxpayer would otherwise be entitled for the transit pass costs, and any unused credit could be carried over until exhausted.

This bill would also allow a credit to an employee of either 40% or 20% of the cost paid or incurred for subsidized public transit passes, as defined under the employer credit, depending on the number of days the employee uses mass transit in San Diego County (80 days to qualify for the 40% credit or 40 days to qualify for the 20% credit). Any unused credit could be carried over until exhausted. Since this bill does not specify otherwise, the general rules in state income tax law regarding the division of credits between taxpayers who share in the costs would apply.

Policy Consideration

The bill limits the employee credit to amounts paid or incurred for a subsidized public transit pass. However, no credit is available if an employee purchases an unsubsidized public transit pass.

Implementation Considerations

This bill provides authority under the Revenue and Taxation Code for the City of San Diego to designate "redevelopment areas," but does not establish any criteria in the Revenue and Taxation Code or elsewhere for making the designation.

This bill does not define what constitutes "increased traffic congestion," "employed," or a "high number" of individuals. The lack of definition could lead to disputes between taxpayers and the department regarding the correct interpretation of these terms.

The provision in this bill that would allow an employee a different credit amount based on the number of days the transit pass is used would be difficult if not impossible to administer. The employee-taxpayers would have no way of verifying the actual number of days the pass was used. A total lack of means of verification could prompt taxpayers to claim the 40% credit regardless of how many days the transit pass was used.

The bill limits the employee credit to an employee as defined in the employer credit. However, the employer credit specifically excludes governmental employers. It is unclear whether amounts paid or incurred by a governmental employee for the purchase of a subsidized public transit pass would be eligible for the employee credit.

This bill would provide an unlimited carryover of excess credit amounts. Credits with unlimited carryovers must be maintained on tax forms and systems even when the credit has expired. Since tax credits usually are used within eight years, most recently enacted credits contain limited carryover provisions, generally eight or ten years.

Technical Considerations

The definition of "transit pass" would require the mass transit vehicle to be "in" a redevelopment area. Amendments 2 and 3 would ensure the credit is allowed for transit passes used to commute to and from employment in a redevelopment area, rather than merely for riding mass transit through a redevelopment area.

This bill contains two inconsistencies between the PITL and B&CTL. To maintain consistency, the author may wish to change the PITL operative date to January 1, 2001, as proposed in attached Amendment 1.

FISCAL IMPACT

Departmental Costs

If the bill is amended to resolve the implementation considerations addressed in this analysis, the department's costs are expected to be minor.

Tax Revenue Estimate

This bill is estimated to impact revenue as shown in the following table.

Estimated Revenue Impact of AB 1754 As Amended April 10, 2000 Enactment Assumed After June 30, 2000 In Whole Dollars		
2001-02	2002-03	2003-04
-\$200,000	-\$200,000	-\$200,000

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this measure.

Revenue Discussion

The revenue impact of this provision will be determined by the number of employers located in San Diego county that are providing subsidized transit passes and the average amount of credit that can be applied against available tax liabilities.

The above estimates are based on state tax return data for the previous transit pass tax credit for the entire state. That previous credit was allowed in graduated amounts; therefore, a composite average credit amount of 30% was used to estimate the credit under this bill. First, the previous impact was increased to reflect the 40% credit allowed in the bill, resulting in approximately \$2 million in tax credits. Second, according to 1990 Census Population, California's total transit users was approximately 685,000, or 4.9% of the total working population. Third, according to the San Diego Metropolitan Transportation Development Board, there are approximately a total of 270,000 daily transit trips. This number includes round trips; therefore, it was assumed that there are approximately 135,000 individual passengers ($270,000/2$). According to the same source, approximately 45% of all daily trips represent work commuters, or approximately 60,750 individuals ($135,000 \times 45\%$). Therefore, for this analysis it was assumed that San Diego County represents approximately 9% of the total California transit users ($60,750/685,000 = 9\%$), generating total credits on the order of \$200,000 annually ($\$2 \text{ million} \times 9\%$).

BOARD POSITION

Pending.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO SB 1754
As Amended April 10, 2000

AMENDMENT 1

On page 2, line 9, strikeout "2000" and insert:

2001

AMENDMENT 2

On page 3, line 15, before "in" insert:

to and from a place of employment located

AMENDMENT

On page 4, line 36, before "in" insert:

to and from a place of employment located